

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

|                         |   |                    |
|-------------------------|---|--------------------|
| SETH PAUL LEMKE,        | ) |                    |
|                         | ) |                    |
| Plaintiff,              | ) |                    |
| vs.                     | ) | NO. CIV-08-0006-HE |
|                         | ) |                    |
| DENNIS BANTHER, ET AL., | ) |                    |
|                         | ) |                    |
| Defendants.             | ) |                    |

**ORDER**


Plaintiff Seth Paul Lemke, a state prisoner appearing *pro se*, filed this action against Dennis Banther and Yvonne Dow pursuant to 42 U.S.C. § 1983 alleging violations of his constitutional rights while he was confined in the Kingfisher County Jail. Consistent with 28 U.S.C. § 636(b)(1)(B), the matter was referred to Magistrate Judge Doyle W. Argo for initial proceedings.

The court previously adopted the magistrate judge's Report and Recommendation and dismissed the plaintiff's claims against defendant Banther. The magistrate judge now recommends that the plaintiff's claims against defendant Dow be dismissed without prejudice for failure to cooperate in discovery.

The plaintiff failed to object to the Report and Recommendation and thereby waived his right to appellate review of the factual and legal issues it addressed. United States v. One Parcel of Real Property, 73 F.3d 1057, 1059-60 (10th Cir. 1996). *See* 28 U.S.C. § 636(b)(1)(C); LCvR72.1. Accordingly, the court adopts Magistrate Judge Argo's Report and Recommendation and grants defendant Dow's motion to dismiss [Doc. #45]. The plaintiff's claims against defendant Dow are dismissed without prejudice.

**IT IS SO ORDERED.**

Dated this 14th day of October, 2009.



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JOE HEATON  
UNITED STATES DISTRICT JUDGE